Indiana, Kentucky, Louisiana, New Mexico, Rhode Island, Tennessee, Utah, Washington, West Virginia, Wyoming, United States.

CONFLICT OF LAWS—THE RIGHT OF A GUARDIAN TO CHANGE THE NATIONAL OR QUASI-NATIONAL DOMICIL OF A LUNATIC.—The appellant, Sumrall's Committee, resisted the taxation of Sumrall's property by the State of Kentucky, situated in Kentucky, on the ground that Sumrall was domiciled in the State of Maryland. The facts showed that Sumrall was 45 years of age and until 1905 had lived in Kentucky. He then became insane and was sent by his father to an asylum in Maryland. Later his father died and he was formally adjudicated insane and put in charge of a committee, a Kentucky corporation. The committee continued to keep Sumrall at the asylum in Maryland and now claims that Maryland is his domicil. *Held,* the committee had no authority to change the quasi-national domicil of its insane ward. *Sumrall's Committee* v. *Commonwealth* (Ky.), 172 S. W. 1057. See NOTES, p. 547.

CONFLICT OF LAWS—USURY.—A sale of Montana land took place in Minnesota, in which a partial payment was made in cash, and the rest in notes, payable in Minnesota. These notes bore interest at 6 per cent before, and 8 per cent after, maturity. Such an advance in interest constituted usury by Minnesota, but not by Montana law. It appeared that there was no intention to evade the usury law of Minnesota, that important elements of the sale took place in Montana, and that the intention of the parties was that the latter law should govern. *Held,* the law in the mind of the parties should govern. *Green* v. *Northwestern Trust Co.* (Minn.), 150 N. W. 229. See NOTES, p. 534.

CONSTITUTIONAL LAW—CLASS LEGISLATION—VALIDITY OF STATE STATUTES COMPELLING DISCRIMINATION IN FAVOR OF A CERTAIN CLASS.—Article 12, § 14 of the Missouri Constitution, makes it the duty of the legislature to prevent any discrimination in rates by the railroads of the State. A statute was enacted whereby the railroads were required to transport members of the National Guard when on an intrastate journey under the orders of the governor at a rate lower than that charged generally. *Held,* the statute is unconstitutional. *State* v. *Missouri, K. & T. R. Co.* (Mo.), 172 S. W. 35. See NOTES, p. 537.

CONSTITUTIONAL LAW—VALIDITY OF A STATE STATUTE FORBIDDING AN EMPLOYER TO EXACT AN AGREEMENT FROM AN EMPLOYEE NOT TO JOIN A LABOR UNION.—A statute made it a criminal act for an employer to exact an agreement from an employee not to join a labor union while in his employ. *Held,* the statute is unconstitutional, since it violates the Fourteenth Amendment protecting the freedom of contract from restrictive State laws. *Coppage* v. *Kansas,* 35 Sup. Ct. 240. See NOTES, p. 540.

CRIMINAL LAW—VALIDITY OF PLEA OF AUTREFOIS ACQUIT WHEN THE ACCUSED IS TRIED FOR PERJURY IN A FORMER TRIAL OF ANOTHER OFFENSE.—The defendant in a former trial for rape testified in his own defense

that he did not commit the acts of intercourse charged and was found not guilty. Later he was indicted for perjury on the ground that this testimony was false. *Held,* he may not plead *autrefois acquit. Murff* v. *State* (Tex.), 172 S. W. 238.

The first question in this class of cases is whether the rule as to former jeopardy bars the prosecution for perjury. Clearly it does not because the prosecutions are for different offenses, one being for rape and the other for perjury for false swearing in the rape case. See *Allen* v. *United States,* 194 Fed. 664, 39 L. R. A. (N. S.) 385. The question involved in the principal case is whether the accused can claim *res judicata.* The doctrine of *res judicata* must be confined to the facts absolutely essential to the determination of the guilt or innocence of the accused, or else no indictment for perjury could be sustained because perjury lies for false swearing upon any material fact. *People* v. *Dowdall,* 124 Mich. 166, 82 N. W. 810. In the principal case since the fact of intercourse, if established, alone would not have convicted the accused, the perjury was relative to facts, the determination of which did not necessarily cause the acquittal of the accused. For this reason the doctrine that the accused can be held for perjury in such a case seems correct both on principle and on authority. *State* v. *Smith* (Minn.), 137 N. W. 295; *People* v. *Albers,* 137 Mich. 678, 100 N. W. 908; *State* v. *Bevill,* 79 Kan. 524, 100 Pac. 476, 17 Ann. Cas. 753; *State* v. *Williams,* 60 Kan. 837, 58 Pac. 476. But where the acquittal of the accused of the first offense is sustained by the facts upon which the perjury is based, the issues in the two cases being identical, the question is *res judicata* and the prosecution for perjury is barred. *Cooper* v. *Commonwealth,* 106 Ky. 909, 51 S. W. 789; *Coffey* v. *United States,* 116 U. S. 436. In some cases the rule, based on grounds of public policy, is laid down, that even though the issues in the two cases are identical and the facts upon which the perjury is based were necessarily determined in the acquittal on the first charge, the doctrine of *res judicata* will not be applied in criminal trials and the indictment for perjury will be sustained. *State* v. *Vandemark,* 77 Conn. 201, 58 Atl. 715, 1 Ann. Cas. 161.

EXECUTORS AND ADMINISTRATORS—DESIGNATION BY WILL OF ATTORNEY FOR EXECUTOR.—A testator by his will directed that his son should be employed by the executors as sole attorney in the settlement of the estate. *Held,* the provision is unenforcible. *In re Wallach* (App. Div.), 150 N. Y. Supp. 302.

There is no legal requirement that an executor shall employ counsel to aid him in the administration of the estate, but the matter is left entirely to his discretion to engage such counsel as he may deem necessary. *Young* v. *Alexander,* 84 Tenn. (16 Lea) 108; *In re Ogier,* 101 Cal. 381, 35 Pac. 900, 40 Am. St. Rep. 61; *Sprinkle* v. *Forrester,* 162 Ill. App. 45. The executor is personally liable in the first instance for the fees of any attorney employed, and they do not constitute debts against the estate. *In re Smith's Estate* (Iowa), 146 N. W. 836; *Clark* v. *Sayre,* 122 Iowa 591, 98 N. W. 484; *Taylor* v. *Mygatt,* 26 Conn. 184; *In re Caldwell,* 188 N. Y. 115, 80 N. E. 663. But the executor will be reimbursed from